

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

**BRIEF FOR APPELLANTS
AND JOINT APPENDIX**

827

IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9841

FRED H. CHRISTIANSON and MARIE N. CHRISTIAN-
SON, Husband and Wife, *Appellants*,

v.

EVA W. GAINES, *Appellee*

Appeal from a Judgment of the District Court of the
United States for the District of Columbia.

*United States Court of Appeals
for the District of Columbia*

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EVA W. GAINES, *Appellee*.

Appeal from a Judgment of the District Court of the
United States for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

The jurisdiction of the District Court is stated in the amended complaint to arise by virtue of the allegation that the amount involved in the suit exceeds the sum of three thousand dollars (Par. 2 amended complaint, App. p. 10). The jurisdiction was based upon the general jurisdiction of said Court, under Title 11, Sections 301-306 of the D. C. Code, 1940.

Jurisdiction of this Court arises by reason of the appeal noted by the appellants (Notice of Appeal, App. p. 24) from a final judgment of the District Court (Order for Summary Judgment, App. p. 23) granting appellee's motion for a summary judgment and dismissing the amended complaint. Title 17, Section 101 of the D. C. Code, 1940.

The amended complaint (App. pp. 10-12) showed that the appellants sustained a loss resulting from acts of the appellee and claimed a judgment for damages. The appellee filed an answer to the amended complaint (App. p. 12), accompanied by Exhibits (App. pp. 2-8), and a Motion for Summary Judgment to dismiss the amended complaint (App. pp. 16-17), accompanied by affidavits (App. pp. 17-22). The District Court entered a final judgment granting appellee's motion for Summary Judgment and dismissed the amended complaint (App. pp. 23-24), from which final judgment the appellants noted an appeal to this Court (App. p. 24).

CONCISE STATEMENT OF THE CASE

The District Court determined that the rights of the parties were fixed in the decree of the Virginia Court (App. p. 23), granted the appellee's Motion for Summary Judgment and dismissed the amended complaint (App. pp. 23-24).

STATEMENT OF THE CASE

The appellants owned 82 acres of ground in Loudon County, Virginia, which was used for a dairy farm and kept in a high state of cultivation (Par. 3 amended complaint, App. p. 10); the appellants kept on this property a dairy herd valued at \$2500. and farm machinery valued at \$2000. (Par. 5 amended complaint, App. p. 10); in addition, the appellants had placed on such land improvements of a temporary nature, which could be removed (Par. 7 amended complaint, App. p. 11); the appellants, under a

rental agreement with a tenant, were also entitled to one half of the net receipts for the milk from the farm and one half of the net receipts from the crops raised on the farm (Par. 4 amended complaint, App. p. 10).

The amended complaint alleged that on May 29, 1946, a decree was entered by the Circuit Court of Loudon County, Virginia, providing that a certain contract of sale should be specifically performed and that the title to said real property be transferred to the appellee, on or before July 1, 1946, but did not entitle the appellee to possession of the personal property or crops, and did not entitle the appellee to possession without affording the appellants an opportunity to remove the personal property and livestock (Par. 6 amended complaint, App. pp. 10-11).

The amended complaint alleged that, immediately before the date of said decree, the appellee on May 23, 1946 notified the appellants to vacate at once and refused to permit the cattle or dairy herd to graze on the property, refused to permit the appellants or the tenant to remove the growing crops, refused to permit the appellants to remove any temporary improvements and demanded that everything be removed from the premises under threat to throw all of the personal property onto the public highway (Par. 8 amended complaint, App. p. 11); as a result of the acts of the appellee, the appellants were compelled to sacrifice the dairy herd to prevent the herd from starving, at less than their actual value, were compelled to sell the farm machinery at far below its actual value, and lost all the temporary improvements and growing crops on the farm (Par. 9 amended complaint, App. p. 11); the appellee well knew that the appellants had no means for caring for the said personal property and livestock, that no legal or proper notice had been given appellants, that such action of the appellee would cause the appellants the loss of all their interest in said personal property and that the acts and threats were made with the sole object of ruining the appellants (Par. 10 amended complaint, App. p. 11); and the

appellants were damaged (Par. 11 amended complaint, App. p. 12).

The appellee contended in the answer to the amended complaint (App. pp. 12-15), the exhibits (App. pp. 2-8) and affidavits (App. pp. 17-22), that the issues were adjudicated by the decrees of the Virginia courts, that she was placed in possession by a deputy sheriff on July 1, 1946, and that on July 1, 1946, there were no dairy cows or other livestock on the farm and no farming machinery.

The District Court determined that the rights of the parties were fixed in the decree of the Virginia Court (App. p. 23), granted the appellee's Motion for Summary Judgment and dismissed the amended complaint (App. pp. 23-24).

The Trial Court held in effect that the decree of a Virginia Court for the conveyance of real estate barred the appellants from recovery of damages for the loss of personal property situate on the real estate and that no genuine issue existed as to the loss sustained by the appellants resulting from the action of the appellee on May 23, 1946, the appellants' right to permit the cattle to graze on the property and to remove temporary improvements, farm machinery and growing crops, although the appellants' amended complaint contended that the improper acts of the appellee occurred prior to the date of the decree and were beyond the scope of the litigation in the Virginia court.

STATUTES, TREATIES, REGULATIONS, OR RULES INVOLVED

The final judgment of the District Court was based on Federal Rules of Civil Procedure, Rule 56, the relevant part of which, so far as this controversy is concerned, provides:

“(c) Motion and Proceedings Thereon. * * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that (except as to the

amount of damages) there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. * * * ”

The matter included within parentheses was omitted by amendment to the Rule but does not affect the questions raised in this appeal.

STATEMENT OF POINTS

In accordance with FRCP Rule 75(d), the appellants filed in the court below a concise statement of the points on which appellants intend to rely, which are contained in the record (App. pp. 24-26), as follows:

1. The Court erred in entering the judgment of February 9, 1948.

2. The Court erred in holding that there was no genuine issue as to any material fact and that the appellee, Eva W. Gaines, as the moving party, was entitled to a judgment as a matter of law.

3. The Court erred in holding that under F. R. C. P. Rule 56 there was no genuine issue of fact raised by the pleadings and affidavits on file.

4. The Court erred in holding that a decision of the Virginia Courts relating to real estate was res adjudicata as to the claim of the appellants relating to personal property situate on the real property.

5. The Court erred in holding that a decision of the Virginia Courts relating to the ownership of the real estate was res adjudicata as to the claim of the appellants relating to growing crops and emblements situate on the real property.

6. The Court erred in holding that the claim of the appellants for damages resulting from the loss of personal property, growing crops and emblements, by reason of the acts of the appellee, were barred by a decision of a Virginia Court relating to the ownership of the parties of certain real estate.

7. The Court erred in holding that the appellants could not recover damages for loss sustained by them as to certain personal property and rights in growing crops by reason of the alleged actions of the appellee in respect to matters not included within the decree of a Virginia Court relating to the interest of the parties in certain real estate.

8. The Court erred in holding that the decrees of a Virginia Court relative to the interest of the parties in certain real estate and affidavits as to facts existing on July 1, 1946 were such as to bar recovery by the appellants for improper acts of the appellee on May 23, 1946, causing the appellants to sustain a loss as to certain personal property, machinery and growing crops.

SUMMARY OF ARGUMENT

The appellants contend that there were genuine issues as to material facts raised by the pleadings, which could not be determined summarily under FRCP Rule 56, and the appellants were entitled to have such issues tried on their merits.

The appellants contended that the court below should have permitted the appellants to proceed to a trial of the issues raised by the pleadings and to present the facts which would show the basis of the appellants' claim for damages. The court below erred in entering a summary judgment dismissing the amended complaint.

The appellants contend that a decision of a Virginia court relating to the ownership of real property was not res judicata as to claims of the appellants relating to personal property, growing crops, emblements, cattle and machinery situate on such real property.

The appellants contend that the alleged improper actions of the appellee were in respect to matters not included within the provisions of the decree of the Virginia court relating to the interests of the parties in certain real property and beyond the scope of the litigation pending between

said parties in said court; and the appellants are entitled to recover damages for loss resulting from such actions of the appellee.

The appellants contend that the decrees of a Virginia court relative to the interests of the parties in certain real property and affidavits as to facts existing on July 1, 1946, do not determine the issue raised by the pleadings that the appellants are entitled to recover damages for a loss as to personal property, cattle, machinery, growing crops and emblements caused by improper acts of the appellee on May 23, 1946.

The appellants contend that the District Court erred in determining that the rights of the parties were fixed in the decree of the Virginia Court, granting the appellee's motion for summary judgment and dismissing the amended complaint.

ARGUMENT

A.

The Facts

The Statement of the Case shows all facts material to the consideration of the questions presented.

B.

Application of Rule 56

The District Court dismissed the amended complaint on a Motion for Summary Judgment under Rule 56. The appellants contend that genuine issues as to material facts were raised by the pleadings. The Court below determined that the decree of the Virginia court fixed the rights of the parties (App. p. 23) and did not consider the issues raised by the pleadings.

The gravamen of the amended complaint was that, immediately before the rendering of the decision of a Virginia court as to the title to real property, the appellee on May 23,

1946, notified the appellants to vacate at once; refused to permit a dairy herd to graze on the property; refused to permit appellants to remove temporary improvements; threatened to throw all personal property, farm equipment and other articles belonging to the appellants onto the public highway (Par. 8 amended complaint, App. p. 11); the appellants as a result of improper acts of the appellee sustained loss (Pars. 9 and 11 amended complaint, App. 11-12); the appellee at the time of such improper actions knew the circumstances of the appellants and the acts and threats were made with the sole object of ruining the appellants (Par. 10 amended complaint, App. p. 11). The responsive pleading denied all such allegations (Par. 8, 9, 10 and 11 answer, App. pp. 13-19). The appellants contend that issues of material facts were raised thereby which could not be determined by a motion for summary judgment.

Farrall v. District of Columbia Amateur Ath. Assn.
80 U. S. App. D. C. 396; 153 F2d 647.

Wittlin v. Giacalone et al., 81 U. S. App. D. C. 20;
154 F2d 20.

A general denial of an allegation of fact is sufficient to raise an issue which will prevent entry of summary judgment.

Garrett Biblical Institute v. American University.,
82 U. S. App. D. C. 265, 267; 163 Fed. 2d, 265.

Sartor v. Arkansas Nat. Gas Corp., 321 U. S. 620,
627; 88 L. ed. 967, 972.

Summary judgment will not lie if real issue appears.

De Savitsch v. Patterson, 81 U. S. App. D. C. 358,
360; 159 F. 2d 15.

Shea v. Second Nat. Bank, 76 U. S. App. D. C. 406,
411; 133 F. 2d 17.

With material facts in dispute, the case was not in a condition for a full adjudication on the pleadings.

Associates Discount Corp. v. Crow, 71 App. D. C. 336,
338; 110 F. 2d 126.

Issues of fact are for determination of jury at trial and not for Court on Motion for Summary Judgment.

Wyant v. Crittenden 72 App. D. C. 163; 113 F2d 170.

Miller v. Miller, 74 App. D. C. 216, 219; 122 F2d. 209.

While it may be that the allegations of the amended complaint are inartfully recited, nevertheless the allegations indicate a valid and sufficient claim for damage resulting from the actions of the appellee, concerning which the appellants should be entitled to introduce proof, even if it were necessary to amend the pleading.

In *Wittlin v. Giacolone*, 81 U. S. App. D. C. 20, 22; 154 F2d 20, this court reversed an order granting summary judgment and said:

“ ‘Even if the pleading of the party opposing the motion is defective and does not state a sufficient claim or defense, the motion will be denied, if the opposing papers show a genuine issue of fact. ’***

“The answer is slightly imperfect because it charges inferentially only, and not directly, that Gravatte was the agent of plaintiffs in practicing fraud, but we think it sufficiently indicates the existence of a valid defense, concerning which the defendant was entitled to introduce proof, even if it were necessary for the defendant to amend.”

Present counsel, who were not counsel in the trial court, respectfully submit that, if the Court so permits, the pleadings could be appropriately amended to state a valid and sufficient claim based on the facts to present the issues for trial on the merits.

C.

The Decrees of the Virginia Court

The appellants contend that the decrees of the Virginia court did not relate to the occurrences alleged in the amended complaint and were not applicable to the issues before the Court on the Motion for Summary Judgment.

(1)

Circumstances Relative to Virginia Suit

A suit in equity was instituted by the appellee and another, as complainants, against the appellants in the Circuit Court for Loudon County, Virginia, to decree specific performance of a contract for the sale of a tract of real estate, containing 82½ acres, near Leesburg, Virginia, and for the conveyance thereof to the complainants. The complaint alleged Marie N. Christianson in her own right and as agent for her husband, Fred H. Christianson, had entered into a contract of sale for said real property and that Mrs. Christianson was acting under a Power of Attorney from her husband. At the time said alleged contract of sale was made, Mr. Christianson was out of the country on the high seas and was serving in the U. S. Merchant Marine in foreign waters (See opinion, Supreme Court of Appeals of Virginia). The complaint showed that Mrs. Christianson refused to sign a deed or to complete performance of the contract, as she was unable to locate her husband, and that he was on the high seas. Before Mr. Christianson returned to the United States, the complainants instituted their suit.

The appellants in answer to such complaint stated that the instrument alleged to be a Power of Attorney was in fact the Last Will and Testament of Fred H. Christianson, made by him incident to service in foreign waters, and that Mr. Christianson had not authorized the execution of such sales contract on his behalf and did not ratify the same; that the complainants knew said facts; had examined the instrument and knew that the same was not a Power of Attorney; and knew that Mrs. Christianson was not authorized to make such contract.

Although the alleged power of attorney was not produced at the trial, the court received evidence as to the existence and contents of such alleged instrument. The appellant, Mr. Christianson, testified that he never executed a power of attorney but that he had executed a Last Will and Testa-

ment prepared for him by the Gunnery Officer on his ship. The trial court held adversely to these appellants and decreed that the appellants "be and are hereby directed to convey said land to the complainants * * * and, in event the said defendants * * * should fail to execute said deed, then * * * appointed a Special Commissioner for the purpose." (Exhibit B, App. pp. 2-4).

The appellants herein appealed from the decision of the Circuit Court to the Supreme Court of Appeals of Virginia. The Appellate Court affirmed the trial court, holding that the evidence supported the conclusion of the trial court that Mr. Christianson executed and delivered to his wife a power of attorney in which she was authorized to sell his interest in the farm.

The decision of the Appellate Court is reported in *Christianson v. Brosius*, 184 Va. 958-969.

The issues in the Virginia case related only to a conveyance of the real estate. The issues in the pending case relate to personal property situate on the real estate, which were not determined by the Virginia courts. The determination by a trial judge in Virginia as to the existence and contents of an alleged instrument, not produced in court, and a summary judgment in the pending case on motion, without a hearing of the facts involved, do not give the appellants the rights to which they are entitled under the law of the land. The appellants believe that the effect of the summary judgment in this case is to deprive the appellants of all their rights in both real and personal holdings, summarily, and that service in the Merchant Marine during the war years, with its accompanying difficulties in relation to personal affairs, have been held to bar them of their rights.

(2)

Analysis of Virginia Decrees

The appellants respectfully submit that the decrees of the Virginia court, appended as Exhibits to the answer to

the amended complaint and considered by the trial court in connection with the Motion for Summary Judgment, did not fix the rights of the parties as to the present controversy and that such decrees, so far as they may affect the appellants, relate only to the ownership of real property, being inapplicable to claims of the appellants with respect to personal property not involved in the litigation between the parties and beyond the scope of such litigation.

Each of the decrees of the Virginia court have been analyzed and, excluding all procedural recitals and formal legalistic verbiage, the decretal substance of each decree is summarized below.

(a)

The decree of October 27, 1944 (Exhibit B, App. pp. 2-4) ordered the Christiansons

“to convey said land to the complainants by a * * * deed * * *, taxes and insurance to be prorated as of the date of delivery of the deed, and in the event the * * * Christiansons should fail to execute said deed, then * * * appointed a Special Commissioner for the purpose, (who) shall forthwith proceed to collect the purchase money for the complainants and to make, execute and deliver to the complainants a deed conveying said land to them * * * ” (App. p. 3, lines 24-34)

and provided that bond be given by the Special Commissioner and accounting procedure for disbursement of the purchase money and for stay of the decree pending appeal.

(b)

The decree of May 29, 1946 (Exhibit C, App. pp. 4-5) ordered that the report of the Bonded Commissioner be approved; referred the cause to a Master Commissioner to ascertain liens and costs; made one E. O. Farmer a party to the suit and issued a rule directing him to show cause why the complainants should not be placed in possession of the real estate and ordered the Sheriff “ * * * to place the

complainants * * * in possession of said property as far as the rights of the Christiansons are concerned * * * ” (App. p. 5).

(c)

The decree of June 10, 1946 (Exhibit D, App. pp. 6-7), on the rule issued against E. O. Farmer, ordered that the cause proceed in the name of the appellee herein, she having acquired the interest of her co-complainant; directed E. O. Farmer “to surrender full and complete possession of the land * * * on or before the 1st day of July 1946 to Eva W. Gaines”; provided for rights of Farmer and Gaines in certain growing crops and grazing privileges.

(d)

The decree of June 17, 1946 (Exhibit E, App. pp. 7-8) approved a report of the Master Commissioner and directed the payment of the funds in the hands of the Bonded Commissioner.

The only decree ante-dating the time of the alleged wrongful acts of the appellee, May 23, 1946, was the decree of October 27, 1944, from which an appeal had been taken by the appellants. Such decree provided for a conveyance of the land only. Questions concerning personal property were not covered by such decree and were not, within the scope of the litigation in which the decree was passed.

The other decrees were all subsequent to the date of the alleged wrongful acts of the appellee.

Under the decree of May 29, 1946, the appellee had no right to possession of the property except through action of the Sheriff. The decree related to the real property only. The Sheriff did not put her in possession until July 1, 1946 (App. p. 21). The appellants claim that the wrongful acts of the appellee occurred on May 23, from which they suffered loss, prior to the date of the decree of May 29 and

prior to the date the Sheriff says he put her in possession of the farm.

The decree of June 10 was based on the rule issued against Farmer, who had been made a party. The decree directed Farmer to surrender possession of the land on or before July 1 and provided for rights between Farmer and Gaines as to growing crops. The decree settled the rights of Farmer and Gaines only. The determination of rights as to growing crops and disposition of personal property was not involved in the suit for specific performance and not included in the provisions of the decree which was affirmed by the Appellate Court. It does not appear from the decree that the appellants were before the Court with respect to the decree of June 10, the matter then coming on with respect to the rule making Farmer a party. There is no showing of any character which would bind the appellants with the decretal effect of this decree. Indeed they were not before the Court as to this decree and, in fact, had no knowledge of its passage.

If the appellee contends that the appellants are bound by the decretal effect of the decree of June 10, under the principle of *res judicata*, there must be a showing, affirmatively borne by the appellee as the proponent of the Motion for Summary Judgment, that the Court passing the decree had jurisdiction of the parties to be bound thereby, in this case the appellants, and the subject matter, in this case the personal property involved in the pending litigation. As the case was closed as to the appellants by the decree for the conveyance of the land, the subsequent proceedings against Farmer are not binding on the appellants unless they were actually before the Court in such instance and that the subject matter is the same. There is no showing that such are the facts. Without such showing, the motion for summary judgment should not have been granted.

In *Commissioner v. Sunnen*, — U. S. — 92 L. ed. 673, 678, the Supreme Court had before it questions as to the scope of *res judicata* and said:

“ * * * where the second action between the same parties is upon a different cause or demand, the principle of res judicata is applied much more narrowly. In this situation, the judgment in the prior action operates as an estoppel, not as to matters which might have been litigated and determined, but ‘only as to those matters in issue or points controverted, upon the determination of which the finding or verdict was rendered.’ ”

In *Cromwell v. Sac County*, 94 U. S. 351, 352; 24 L. ed. 195, 198, the Supreme Court also held:

“ * * * In all cases, therefor, where it is sought to apply the estoppel of a judgment rendered upon one cause of action to matters arising in a suit upon a different cause of action, the inquiry must always be as to the point or question actually litigated and determined in the original action, not what might have been litigated and determined. Only upon such matters is the judgment conclusive in another action.”

In *Griffin v. Griffin*, 327 U. S. 220, 90 L. ed. 635, the Supreme Court considered the effect to be given to a judgment as to the amount of alimony due under a prior decree directing payment of alimony, the proceedings on such judgment being subsequent to the entry of the decree for the payment of the alimony, and held, in its opinion with respect to such judgment:

“While it is undoubtedly true that the 1926 decree, taken with the New York practice on the subject, gave petitioner notice at the time of its entry that further proceedings might be taken to docket in judgment form the obligation to pay installments accruing under the decree, we find in this no ground for saying that due process does not require further notice of the time and place of such further proceedings, inasmuch as they undertook substantially to affect his rights in ways in which the 1926 decree did not.” 327 U. S. 229, 90 L. ed. 640.

The decree of June 17 only provided for the distribution of the funds received from the sale of the real estate. It is respectfully submitted that it could have no effect whatsoever on the issues involved in this case.

The appellants respectfully submit that the Trial Court erred in determining that "the rights of the parties are fixed in the Court's decree and they are all bound by its terms" (App. p. 23) and in granting the motion for summary judgment.

D.

The Affidavits in Support of the Motion

The appellants contend that the affidavits filed in support of the Motion for Summary Judgment did not relate to the facts in issue. The amended complaint alleged wrongful acts of the appellee on May 23, 1946 resulted in damage to the appellants by the loss of certain personal property. The affidavits filed on behalf of the appellee referred to facts existing on July 1, 1946.

(1)

The appellee stated in her affidavit that she was put in possession of the farm by the Sheriff on July 1, 1946 and that there was no personal property on the farm at that time (App. p. 17). She did not deny in her affidavit the allegations of the amended complaint as to her improper acts on May 23, 1946 and the resulting damage to the appellants.

(2)

The affidavit of E. O. Farmer recites a tenancy agreement with the appellants; his possession thereof; knowledge of the pending litigation; that personal property of the appellants was removed from the farm in May or June, 1946; and there was no personal property of the appellants on the farm on June 30 (App. pp. 18-19).

The statement of this affidavit that the appellants personal property was removed *in May or June*, certainly is not in conflict with the allegation of the complainants as to their loss occasioned by the acts of the appellee on May 23.

(3)

The affidavit of the Deputy Sheriff recites that on July 1, 1946 he put the appellee in possession of the farm and other facts existing on that date (App. pp. 21-22). This affidavit does not in any way reply to the issues involved.

The appellants submit that the affidavits noted above do not support the summary judgment.

CONCLUSION

The appellants appeal to this court for the right to have their claims tried on the merits. Their interests in real property have been taken from them by the determination of a Virginia court as to the existence and contents of an alleged Power of Attorney, which was not produced in Court, although at the time such power of attorney was allegedly given one of the appellants was beyond the seas in the service of his country during the war years. In this instance, the trial court has held them barred as to their claim for the loss of personal property occasioned by acts of the appellee on the theory that the decree in the Virginia Court as to the real estate is an estoppel.

The appellants respectfully submit that the District Court erred in determining that the rights of the parties were fixed in the decree of the Virginia court, granting the appellee's motion for summary judgment and dismissing the amended complaint.

It is respectfully submitted that the judgment of the District Court be reversed and the cause remanded with directions for a trial on the merits.

Respectfully submitted,

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APPENDIX

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IN THE
United States Court of Appeals

DISTRICT OF COLUMBIA.

No. 9841.

FRED H. CHRISTIANSON and MARIE N. CHRISTIANSON, Husband and Wife, *Appellants*

v.

EVA W. GAINES, *Appellee*

Appeal from a Judgment of the District Court of the United States for the District of Columbia.

JOINT APPENDIX

1

Filed Dec 7 1946

In the District Court of the United States
For the District of Columbia.

Civil Action No. 38023.

FRED H. CHRISTIANSON and MARIE N. CHRISTIANSON, hus-
band and wife, Kendall Green, D. C., *Plaintiff*

v.

BOYD M. BROSIUS, Kennedy-Warren Apartments Lunch
Room and EVA W. GAINES, Wardman Park Hotel
Lunch Room, *Defendants*.

* * * * *

Exhibit B Attached to Answer

10 At a Circuit Court held for Loudoun County to wit:

October 27, 1944.

In Chancery.

BOYD M. BROSIUS and EVA W. GAINES, *Complainants*

v.

MARIE N. CHRISTIANSON and FRED H. CHRISTIANSON,
Defendants.

Decree

This cause coming on to be heard upon the bill of com-
plaint, the exhibits therewith filed, the demurrer of Marie
N. Christianson, the motion of Fred H. Christianson to be
dismissed as a party defendant, the separate answers of
Fred H. Christianson and Marie N. Christianson, the depo-
sitions of witnesses duly taken and filed with the papers in
this cause, and was argued by counsel.

And it appearing to the Court that the complainants have
proceeded regularly at rules to properly mature this suit for
hearing, and the same having been set for hearing, and it
further appearing to the Court that the defendant, Marie

N. Christianson, in her own right and as agent for her husband, Fred H. Christianson, executed a valid and enforceable contract for the sale and conveyance of that certain tract or parcel of land situated in Leesburg Magisterial District in Loudoun County, Virginia, located about $2\frac{3}{4}$ miles south of Leesburg, Virginia on what is known as Route 15, containing $82\frac{1}{2}$ acres, more or less, adjoining and bounded by the lands of Gaines, Nalle, Daniel, Moss and others, and being the same land which was conveyed to Fred H. Christianson and Marie N. Christianson, his wife by Lawrence M. Newberry and Mamie E. Newberry, his wife, by deed dated July 31st, 1942, and recorded in Deed Book 11 P's, Folio 267 among the land records of said county, to the said Boyd M. Brosius and Eva. W.

Gaines, for the sum of Ten Thousand and Seven
 11 Hundred Dollars (\$10,700.00) cash, and that the said complainants are ready, willing and able to pay for said land in accordance with the terms of the said contract, and that the complaints are entitled to have said lands conveyed to them upon compliance with the provisions of said contract, upon consideration whereof the Court doth adjudge, order and decree that the defendants, Marie N. Christianson and Fred H. Christianson, be, and they are hereby directed to convey said land to the complainants by a good and sufficient general warranty deed free of encumbrances within ten days from the date of entry of this decree, taxes and insurance to be prorated as of the date of delivery of the deed, and in the event the said defendants, Marie N. Christianson and Fred H. Christianson, should fail to execute said deed, then Wilbur C. Hall, who is hereby appointed a Special Commissioner for the purpose, shall forthwith proceed to collect the purchase money for the complainants and to make, execute and deliver to the complainants a deed conveying said land to them with special warranty of title.

But before acting under this decree the said Wilbur C. Hall shall execute a bond with approved security in the

penalty of \$12,000.00 conditioned to disburse said purchase money in accordance with the further order of the Court, and the premium on such bond and the usual commissions allowed to a Commissioner of Sale to be deducted from said purchase money, together with the cost of this proceeding, to which action of the Court in decreeing the specific performance of the contract in the bill and proceedings mentioned and described, the complainants by counsel except and they having expressed their intention to apply to the Supreme Court of Appeals of Virginia, for an appeal and supersedeas, it is further adjudged, ordered and decreed that the provisions of this decree shall be stayed for a period of four months upon the execution within ten days by the defendants of a bond in the penalty of \$500.00 with approved security conditioned as the law directs.

And this cause determining the principles of the cause is left open for further proceedings as may be necessary to be had herein.

/s/ J. R. H. Alexander
Judge

Exhibit C

Virginia:

In the Circuit Court for Loudoun County

12

May 29, 1946

In Chancery

BOYD M. BROSIUS, ET ALS, *Complainants*

v.

MARIE N. CHRISTIANSON, ET ALS, *Defendants*

Decree

This cause came on this day to be again heard on the papers formerly read, the report of Wilbur C. Hall, Bonded Commissioner, this day filed, to which report no exceptions have been filed and was argued by counsel.

On consideration whereof the Court doth adjudge, order and decree that the report of Wilbur C. Hall, Bonded Commissioner, be, and the same is hereby ratified, approved and confirmed, and it further appearing to the Court that there is in the hands of Wilbur C. Hall, Bonded Commissioner, for distribution, the sum of \$10,294.68, the Court doth, adjudge, order and decree that this cause be, and the same is hereby referred to Master Commissioner, E. O. Russell, who shall forthwith ascertain and report the lien binding said real estate with interest thereon to June 19th, 1946 including the costs of this suit and the costs expended by complainants in defending said suit in the Supreme Court of Appeals of Virginia.

And it further appearing to the Court that E. O. Farmer, who is not a party to this suit, who is in possession of said property as a tenant, the Court doth adjudge, order and decree that E. O. Farmer be made a party to this suit and that process do issue against him returnable to June 3, 1946 at 11:00 A. M. at the Court House, Leesburg, Virginia, that a rule do issue against the said E. O. Farmer, returnable on the 3rd day of June, 1946, at 11:00 A. M. at the Court House, Leesburg, Virginia, directing him to show
 13 cause, if any he can, why the complainants, or those claiming under them, should not be placed in possession of the real estate in the bill and proceedings mentioned and described.

And the Court doth further adjudge, order and decree that the Sheriff of Loudoun County, be, and he is hereby directed to place the complainants, or any one claiming under them, in possession of said property as far as the rights of Marie N. Christianson and Fred H. Christianson are concerned.

And this cause is left open for further proceedings to be had herein.

Enter:

/s/ J. R. Alexander
Judge

14

Exhibit D

Virginia:

In the Circuit Court for Loudoun County

June 10, 1946

In Chancery

BOYD M. BROSIUS ET ALS *Complainants*

v.

MARIE N. CHRISTIANSON ET ALS *Defendants.*

This cause came on this day to be again heard on the papers formerly read, and the rule against E. O. Farmer returnable on the 3rd day of June, 1946, which was continued on this day, and was argued by counsel.

On consideration whereof it being suggested to the Court that Eva W. Gaines has acquired by deed the interest of Boyd M. Brosius, the Court doth adjudge, order, and decree that this cause shall hereafter proceed in the name of Eva W. Gaines.

The Court does further adjudge, order, and decree that E. O. Farmer be and he hereby is directed and required to surrender full and complete possession of the land in the bill and proceedings mentioned and described on or before the 1st. day of July, 1946, to the said Eva W. Gaines; that the said E. O. Farmer is granted the right to harvest the barley crop on or before July 1st., 1946, retaining one-half thereon for his own use and the remaining one-half to be harvested by him and stored in the granary for the use of Eva W. Gaines and that the cost of threshing the same to be borne equally by said Eva W. Gaines and E. O. Farmer, the straw from said barley to be left on the farm, the said Farmer to perform all labor without charge in connection therewith; the said Eva W. Gaines to have the hay
 15 to be cut and to have the right to immediately work the corn crop now on said farm, and to have the right to plant the three acres now plowed in any crop she may desire. The said Eva W. Gaines to have the right to put

the hay in the mow. The said E. O. Farmer to keep the cows in what is known as the front field opposite the Daniel property, and not to allow them to graze in any other field on the farm.

And this cause is left open for further proceedings to be had herein.

Enter:

/s/ J. R. ALEXANDER
Judge

16

Exhibit E

Virginia:

In the Circuit Court for Loudoun County

June 17, 1946

In Chancery

BOYD M. BROSIUS, ET ALS *Complainants*

v.

MARIE N. CHRISTIANSON, ET ALS *Defendants*

Decree

This cause came on this day to be again heard on the papers formerly read, the forthwith report of Master Commissioner, E. O. Russell, returned in this cause on the 15th day of June, 1946, to which report no exceptions have been filed, and was argued by counsel.

On consideration whereof, the Court doth adjudge, order and decree that the forthwith report of Master Commissioner, E. O. Russell, be and the same is hereby ratified, approved and confirmed, and the Court doth further adjudge, order and decree that Wilbur C. Hall, Bonded Commissioner, shall pay out of the funds in his hands as follows:

To E. O. Russell, Clerk, costs of suit	\$ 37.20
To E. O. Russell, Clerk, witnesses	1.50
To E. O. Russell, Commissioner in Chancery for report	30.00

To E. E. Garrett, Assignee, of the Loudoun National Bank	2509.04
To The Peoples National Bank and or E. O. Russell, Commissioner in Chancery in full payment of a sight draft drawn against Fred H. Christianson by the Federal Land Bank of Baltimore in full payment of first trust with interest to June 19, 1946	1613.00
To A. F. Anderson for costs advanced to stenographer, depositions	64.51
To Hall & Hall per decree of Supreme Court of Appeals	50.00
To A. V. Rives and A. F. Anderson, attorneys, balance due A. V. Rives for counsel fees	119.36
To A. F. Anderson, attorney, balance due counsel fees	125.00
To Hall & Hall, attorneys for Boyd M. Brosius and Eva W. Gaines, printing brief, Supreme Court	42.00
To Hall & Hall costs advances Sheriff, process in suit	3.00
To Hall & Hall, National Surety Corporation for bond premium	48.00
To Fred H. Christianson and Marie H. Christianson, balance in full	\$5619.99

17 And the Court doth further adjudge, order and decree that the surety on the bond of Wilbur C. Hall, be and they are hereby released of any further liability in this cause.

And the subject matter of this suit having been disposed of this decree is final.

Enter:

/s/ J. R. H. ALEXANDER
Judge

Seen:

A.F.A.
W.C.H.

Entered:

June 17, 1946

36

Filed Jul 19 1947

Motion for Summary Judgment

The defendant, Eva W. Gaines, moves this court for summary judgment dismissing the complaint in this action on the grounds that the claim of the plaintiffs in this action has been finally adjudicated on its merits by the Circuit Court for Loudoun County, Virginia in a suit heretofore brought between the parties hereto and in support thereto appends an affidavit of said Eva W. Gaines, prayed to be read as part of this motion.

HENRY H. GLASSIE,
Attorney for defendant,
Eva W. Gaines.

42

Filed Oct 20 1947

Order Overruling Motion for Summary Judgment and Permitting Filing of Amended Complaint

Motion for summary judgment, filed herein by the defendant, Eva W. Gaines, this day coming before me to be heard, and the Court being advised in the premises, it is by the Court, this 20 day of October 1947.

ORDERED, that the said motion for summary judgment be and the same is hereby denied and it is further

ORDERED, that plaintiff have leave to file an amended complaint.

ALEXANDER HOLTZOFF,
Justice.

43

Filed Oct 20 1947

FRED H. CHRISTIANSON and MARIE N. CHRISTIANSON, husband
and wife, *Plaintiffs*

v.

EVA W. GAINES, *Defendant*.

Amended Complaint for Damages

The above named plaintiffs, permission being first had and obtained, file their amended complaint and show to the Honorable Court as follows:

1. That the plaintiffs and the defendants are citizens of the United States and residents of the District of Columbia.

2. That the amount involved in this suit exceeds the sum of Three Thousand Dollars.

3. That the plaintiffs herein, were, for a number of years the owners of 82 acres of ground used for a dairy farm in the County of Loudon and State of Virginia; that said farm in the County of Loudon and State of Virginia was improved by a dwelling, outbuildings, and large amount of other improvements and was always kept in a high state of cultivation.

4. That at the time hereinafter set forth the above described property was rented under a rental agreement by which the said plaintiffs were to receive one-half of the net receipts for the milk from said farm and were to receive in addition one-half of the net receipts from the crops raised on said farm; that the defendant well knew of these terms and conditions.

5. That at the times hereafter set forth there was on the said property a dairy herd belonging to plaintiffs of the reasonable value of \$2500.00 and that there was on the said farm machinery, also the property of the plaintiffs herein of the reasonable value of \$2,000.00.

44 6. That on May 29, 1946, a decree was entered by the Circuit Court of Loudon County, Virginia, providing that a certain contract of sale should be specifically performed and that the said property herein described

should be transferred to the said defendant, on or before July 1, 1946; that the said decision provided for the transfer of the title to said property only, and did not entitle said defendant to possession of any of the personal property or crops, and did not entitle said defendant to possession without the opportunity affording plaintiffs of removing their personal property and livestock.

7. That while the said suit was pending the plaintiffs had placed on said land certain improvements of a temporary nature to be removed should the said sale be confirmed or enforced.

8. That immediately before the rendering of the decision as above set forth the defendant herein on May 23, 1946, notified said plaintiffs in writing to vacate at once, and refused to permit any of the cattle or dairy herd of the plaintiffs to graze on said property; that defendant refused to permit said plaintiffs or his tenants to remove any of the growing crops; refused to permit plaintiffs to remove any of the temporary improvements; demanded that everything be removed from said premises under threat to throw all of the personal property, farm equipment and other articles unto the public highway.

9. That as a result of these illegal acts on the part of the defendant plaintiff was compelled to sacrifice the dairy herd to prevent the herd from starving, at a figure far below their actual value, was compelled to sell all the farm machinery at far below its actual value; lost all of the temporary improvements made on said property, lost all the growing crops that were on the said farm.

10. That at the time of the actions of the said defendant the said defendant well knew that plaintiffs had no means of caring for the said personal property and livestock; well knew that no legal or proper notice had been
45 given plaintiffs; well knew that the action on their part would cause the loss to the plaintiffs of all their interest in the said personal property and that their acts and threats were made with the sole object of ruining the plaintiff herein.

11. That as a result of the actions of the said defendant the plaintiffs have been damaged in the sum of \$20,000.00.

WHEREFORE, said plaintiffs demand judgment in the sum of \$20,000.00 and costs of this suit.

Plaintiffs demand trial by jury.

BEN. LINDAS,
 JOS. H. SCHNEIDER,
Attorneys for Plaintiffs.
 600 7th St., S. W.

BILL OF PARTICULARS.

Loss in Sale of Dairy Herd by Plaintiffs.....	\$1,500.00
Loss in Sale of Farm Machinery.....	1500.00
Loss of Growing Crops on said Farm.....	2500.00
Loss of Improvements on said Farm.....	1000.00
Punitive Damages	13500.00

Total Damage Claimed\$20000.00

LINDAS & SCHNEIDER.

* * * * *

46

Filed Nov 7 1947

Answer of Eva W. Gaines to Amended Complaint

1. The defendant, Eva W. Gaines, admits the allegations contained in paragraph 1 of the complaint.

2. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 2 of the complaint.

3. The defendant, Eva W. Gaines, admits that plaintiffs were at one time owners of a farm of approximately 82 acres in Loudoun County, Virginia, improved by dwelling and out-buildings, and said defendant denies each and every other allegation contained in paragraph 3 of the complaint.

4. The defendant, Eva W. Gaines, admits that under date of September 25, 1944, the farm formerly owned by the plaintiffs was rented by them to one, E. O. Farmer, that such rental agreement was entered into after the commencement of the suit hereinafter mentioned and after

lis pendens had been filed therein against all real estate of the plaintiffs in Loudoun County, Virginia; and a memorandum thereof duly recorded, and was expressly made subject to such litigation; that she first became aware of this rental agreement in May, 1946; that a true copy of such rental agreement is appended hereto, marked "Exhibit A", and made a part hereof; and said defendant denies each and every other allegation in paragraph 4 of the complaint.

47 5. The defendant, Eva W. Gaines, admits that there was a dairy herd and certain machinery on said farm sometime prior to July 1, 1946 but that no such machinery or herd were on said farm on July 1, 1946; and said defendant alleges that she does not have sufficient information to admit or deny the remaining allegations contained in paragraph 5 of the complaint.

6. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 6 of the complaint but admits that certain decrees were entered by the Circuit Court of Loudoun County, Virginia in a suit brought by said defendant and Boyd M. Brosius, defendant, against plaintiffs, as set forth in the Second Defense of this answer.

7. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 7 of the complaint.

8. The defendant, Eva W. Gaines, admits that she was put in possession of said farm formerly belonging to the plaintiffs by the Sheriff of Loudoun County, Virginia, and entered into possession of the said farm on July 1, 1946 pursuant to the orders of the Circuit Court of Loudoun County, Virginia as hereinafter set forth specifically under the Second Defense of this answer, and said defendant denies each and every other allegation contained in said paragraph 8 of the complaint.

9. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 9 of the complaint.

10. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 10 of the complaint.

11. The defendant, Eva W. Gaines, denies the allegations contained in paragraph 11 of the complaint.

SECOND DEFENSE

Heretofore and on, to wit, April 1, 1943, plaintiffs herein and defendants herein entered into contract of sale whereby the plaintiffs agreed to sell and the defendants agreed to purchase a certain farm of approximately 82 acres in Loudoun County, Virginia. The plaintiffs herein refused to convey said farm in accordance with said contract. The defendants herein filed suit in the Circuit Court of 48 Loudoun County, Virginia on August 7, 1944 for specific performance of said contract and at the same time filed a lis pendens therein against all real estate of the defendants in Loudoun County, Virginia, under Section 6469 of the Code of Virginia. On October 27, 1944, said Circuit Court of Loudoun County, Virginia entered a decree directing plaintiffs herein to convey said farm to the defendants herein and in the event of their failure to do so, directing a commissioner appointed for the purpose to make, execute and deliver to the defendants herein a deed conveying said land to them, all as set forth in a certified copy of said decree appended hereto, marked "Exhibit B", and made a part thereof. The plaintiffs herein filed in the Supreme Court of Appeals of Virginia, their Petition for Appeal and Supersedeas to said decree and upon hearing the said Supreme Court of Appeals of Virginia (Record #2991) entered judgment affirming the decree of the Circuit Court of Loudoun County, Virginia in all its parts. The judgment and the opinion of the Supreme Court of Appeals of Virginia being rendered March 4, 1946 has been duly reported in 184 Va. 958. Following the said affirmation by the Supreme Court, the Circuit Court for Loudoun County, Virginia entered on May 29, 1946 a decree in said suit making E. O. Farmer who was in possession of said farm as a tenant of the plaintiffs a party to this suit and ordering the Sheriff of Loudoun County, Virginia to place the defendants herein or anyone claiming under them immediately in the possession of said property as far as the rights of the plaintiffs herein were concerned. A certified

copy of this decree, entered May 29, 1946, is appended hereto, marked "Exhibit C" and made a part hereof. Subsequently and on June 10, 1946, said Circuit Court for Loudoun County, Virginia entered a decree in the said suit ordering the cause to proceed in the name of Eva W. Gaines who had acquired by deed the interest of the other defendant therein and herein, to wit, Boyd M. Brosius, ordering said E. O. Farmer to surrender full and complete possession of said farm on or before July 1, 1946, and completely settling all the rights of the parties thereto and the parties hereto in the growing of crops on said farm and the time within which any personal property on said farm might be removed, all as appears by a certified copy of said decree appended hereto marked "Exhibit D" and made a part hereof. And further, said Circuit Court of Loudoun County, Virginia by a decree entered on June 17, 1946, a certified copy of which is appended hereto marked "Exhibit E", and made a part hereof, directed the disposition of the funds in the hands of the Bonded Commissioner therein representing the purchase price of said farm including the payment of \$5,619.99 of the plaintiffs herein and decreed that "the subject matter of this suit having been disposed of, this decree is final". The claim of plaintiffs has therefore been finally adjudicated on its merits by the Circuit Court of Loudoun County, Virginia in a suit heretofore brought between the parties hereto.

THIRD DEFENSE

The complaint filed herein does not state a cause of action.

HENRY H. GLASSIE,
Attorney for Defendant
Eva W. Gaines

* * * * *

Filed Jan 5 1948

Stipulation

It Is Hereby Stipulated by and between the plaintiff, Fred H. Christianson and Marie N. Christianson, and the defendant, Eva W. Gaines, by their respective counsel,

That the five exhibits, marked respectively "Exhibit A", "Exhibit B", "Exhibit C", "Exhibit D", and "Exhibit E", appended to and made a part of the Amended Answer of defendant, Eva W. Gaines to plaintiffs' complaint, filed herein on June 30, 1947, be considered in all respects as if they had been appended to and made a part of the Answer of Eva W. Gaines to plaintiff's Amended Complaint filed herein on November 7, 1947.

BEN LINDAS

Attorney for Plaintiffs

600 Seventh St., S. W.

LINDAS & SCHNEIDER

HENRY H. GLASSIE

Attorney for defendant,

Eva W. Gaines

1009 Tower Building

BARBOUR, GARNETT, PICKETT, KEITH & GLASSIE

* * * * *

Filed Jan 5 1948

Motion for Summary Judgment

The defendant, Eva W. Gaines, moves this Court for summary judgment dismissing the complaint in this action on the ground that the claim of the plaintiffs in this action has been finally adjudicated on its merits by the Circuit Court for Loudoun County, Virginia in a suit heretofore brought between the parties hereto, and in support thereto appends affidavits of the said Eva W. Gaines, E. O. Farmer, tenant of plaintiffs, and C. F. Reed, Deputy Sheriff of Loudoun County, Virginia, prayed to be read as a part hereof,

and said defendant particularly refers to the certified copies of decrees of the Circuit Court of Loudoun County, Virginia, attached to the answer herein, and hereby made a part of this motion, which have so adjudicated the claim of plaintiffs herein.

HENRY H. GLASSIE

Attorney for Defendant

Eva W. Gaines

* * * * *

53

Affidavit

District of Columbia, to-wit:

Eva W. Gaines, being duly sworn, deposes and says that she was put in possession of the farm mentioned in the complaint herein, by the Sheriff of Loudoun County, Virginia, and entered into possession of said farm July 1, 1946. Before July 1, 1946 she had not been in or near or taken possession of any part of said farm, or any property thereon;

That her right to take possession of said farm on July 1, 1946 and indeed, as far as plaintiffs herein are concerned, the right to take possession on April 29, 1946, was in accordance with decrees and a final judgment of the Circuit Court of Loudoun County, Virginia, certified copies of which have been appended to the answer of the defendant filed herein and marked "Exhibit B, C, and D and E," respectively, and made a part hereof;

That at the time of taking possession of said farm on July 1, 1946 there was no personal property of any kind thereon.

EVA W. GAINES

Sworn to before me this 2nd day of January, 1948.

LEILA M. HODGES,

Notary Public, D. C.

My commission expires August 14, 1949.

* * * * *

Affidavit

State of Virginia

County of Loudoun ss:

E. O. Farmer, being duly sworn deposes and says:

That under date of September 23, 1944 the farm formerly owned by Fred H. Christianson and Marie N. Christianson in Loudoun County, Virginia was rented by them to him under the terms of a written rental agreement, copy of which is appended;

That he entered into possession of the said farm under this rental agreement on October 1, 1944 and remained in possession until June 30, 1946;

That at the time of making said agreement and taking possession he knew that the title to the farm was under litigation and his rental agreement was expressly subject to such litigation;

That from October 1, 1944 until June 30, 1946 he had sole and exclusive possession of the farm and Fred H. Christianson and Marie N. Christianson did not have such possession;

That all livestock and personal property belonging to Fred H. Christianson and Marie N. Christianson was removed from said farm some time in May or June, 1946, and before June 30, 1946, so that there was no personal property on said farm belonging to said Fred H. Christianson or Marie N. Christianson or himself when he gave up possession thereof on June 30, 1946.

That he did not remove from said farm or remove his personal belongings from said property under any
55 threat or compulsion from Eva W. Gaines, but did so in accordance with the terms of an order of the Circuit Court of Loudoun County, Virginia as to possession,

the ownership of crops and the removal of livestock and other personalty.

E. O. FARMER

Sworn to before me this 27th day of December, 1947.

WILBUR A. HALL

Notary Public

My commission expires July 17, 1948.

56

Rental Agreement

I, Fred H. Christianson, Owner, hereby agree to rent to Emmitt O. Farmer, Tenant, Spring Brook Farm, eighty-two and one-half (82½) acres, for one year, from October 1, 1944 to October 1, 1945, on the following terms:

Emmitt O. Farmer, Tenant, shall purchase six (6) cows of the herd on the farm at One Hundred and Fifty (\$150.00) Dollars each, to be selected by Owner picking two cows and Tenant picking one cow until tenant has picked six cows. Christianson having the right to repurchase at same price if he so desires.

Owner to retain two rooms in the house for own use with the right of entry.

Tenant to receive one-half of monthly milk check after expenses have been paid. The cost of hauling milk, cost of feed, fertilizer, seed, and other ordinary expenses of operating a dairy farm are to be paid on a fifty-fifty basis.

Tenant agrees to furnish all labor, and to keep all buildings, fences, and equipment in good condition and repair.

Owner to pay for the cost of materials to repair buildings and fences.

Owner to pay half the cost of repairs to machinery.

Stock and equipment are as follows:

2 black horses (Mack and Frank)

1 bay mare (Flash—three years old in 1945)

18 cows

1 large heifer

small heifers

- 1 weber wagon and bed
- 1 low wheel wagon and bed
- 1 McDeering mower
- 1 dump rake
- 1 John Deere lime spreader
- 1 corn planter
- 1 riding cultivator
 - 1 walking cultivator
- 57 2 walking plows
 - 1 spring-tooth harrow
- 1 grind stone
- 1 wheelbarrow
- 1 drill press
- 1 vise
- 20 gallons of barn paint
- 1 hay fork and track
- 1 grain drill
- 13 discs
- 1 two unit DeLaval milker
- 1 extra bucket
- 1 four can dairy box and compressor and motor
- 1 24" Aireator and pump
- 12 ten gallon milk cans (10)
- 1 strainer

Tenant agrees to replace any lost tools or equipment.

Owner to pay one-third of electric bill.

Owner to receive one-half of fruit.

Anything not covered in this agreement is to be dealt with as is customary between owner and tenant. It is understood that the farm is under litigation.

Owner and tenant to each pay one-half of the cost of repairing or replacing broken machinery.

Agreed to at Leesburg, Virginia, this 25th day of September, 1944.

/s/ FRED H. CHRISTIANSON

Owner

/s/ E. O. FARMER

Tenant

State of Virginia
County of Loudoun ss.

Subscribed and sworn to before me this 1st day of November, 1944.

/s/ REED GALLENER
Notary Public

My commission expires April 30, 1946.

Sept. 18 1945

Renewed for 1 year and E. O. Farmer to have $\frac{1}{3}$ of milk subsidy for 1946.

/s/ FRED H. CHRISTIANSON (Owner)
/s/ E. O. FARMER

* * * * *

58

Affidavit

State of Virginia, County of Loudoun, to-wit:

C. F. Reed, being duly sworn deposed and says as follows: That I have been deputy Sheriff in Loudoun County, Va., since January 1st., 1940, and that I am a deputy sheriff under S. P. Alexander, Sheriff of Loudoun County, Va.

I further state that on July 1st., 1946, pursuant to an order of the Circuit Court for Loudoun County, Va., directing me to place Eva W. Gaines in possession of a certain farm formerly belonging to Fred H. and Marie N. Christianson and near Leesburg, on Route 15 in Loudoun County, Va., which order was entered on June 10th., 1946, in the chancery cause entitled Brosius et als vs. Christianson, I did go to said farm with Eva W. Gaines and put her in possession thereof in accordance with said order. I further state that up until July 1st., 1946, E. O. Farmer, the tenant, was in possession and that on July 1st., 1946, there were no dairy cows or other live stock on said farm and no farming machinery. The only thing there or I should say personal property was a little hay which a man by the name of Downs claimed to have bought from Mr. Farmer and Miss.

Gaines said that he might remove this as she had no objection and that he could get it any time.

59 Mr. Farmer was perfectly willing for Miss. Gaines to have possession. The fact is that the Christian-sons' had not been on the farm for several years, and it had been occupied solely by Mr. Farmer and his family.

C. J. REED
Deputy Sheriff

State of Virginia, County of Loudoun, to-wit:

Subscribed and sworn to before me in my County and State aforesaid this 27th. day of December, 1947.

(Seal) WILBUR C. HALL
Notary Public

My commission expires July 17, 1948.

* * * * *

63 Filed Mar 8 1948

Withdrawal of Appearance

Please withdraw the appearances of Ben Lindas and Joseph H. Schneider as attorneys for the plaintiffs in the above entitled cause.

BEN LINDAS AND
JOS. H. SCHNEIDER

By BEN LINDAS
608 7th Street, S. W.,
Washington, D. C.

* * * * *

64

Filed Mar 8 1948

Appearance of Attorneys

Please enter the appearance of H. Winship Wheatley and H. Winship Wheatley, Jr., as attorneys for the plaintiffs in the above entitled cause.

FRED H. CHRISTIANSON
 MARIE N. CHRISTIANSON
 H. WINSHIP WHEATLEY
 H. WINSHIP WHEATLEY, JR.
 1010 Vermont Avenue, N. W.,
 Washington, D. C.
Attorneys for Plaintiffs

No objections.

BEN LINDAS

* * * * *

Excerpt from Hearing of February 5, 1948

79 The Court: I think the motion must be sustained.

I think the rights of the people are fixed in the court's decree, and they are all bound by its terms.

Mr. Glassie will present the order.

* * * * *

80

Filed Feb 9 1948

Order for Summary Judgment

This cause coming on for consideration upon the Motion for Summary Judgment dismissing the amended complaint herein as to defendant, Eva W. Gaines, filed herein with accompanying affidavits on January 5, 1948, upon consideration of the pleadings, the points and authorities filed and argument of counsel, and the Court being fully advised in the premises, it is by the Court this 9th day of February, 1948,

Ordered, Adjudged and Decreed that the Motion of defendant, Eva W. Gaines, for summary judgment be and the same is hereby granted and the complaint of Fred H. Chris-

tianson and Marie N. Christianson is hereby dismissed as to the defendant, Eva W. Gaines.

F. DICKINSON LETTS
Justice

81

Filed Mar 8 1948

Notice of Appeal

Notice is hereby given this 8th day of March, 1948, that Fred H. Christianson and Marie N. Christianson, plaintiffs above named, hereby appeal to the United States Court of Appeals for the District of Columbia from the final judgment of this Court entered on the 9th day of February, 1948 in favor of Eva W. Gaines against said Fred H. Christianson and Marie N. Christianson.

FRED H. CHRISTIANSON,
MARIE N. CHRISTIANSON,
7th & Florida Ave., N.E.,
Washington, D. C.,
Plaintiffs-Appellants.

H. WINSHIP WHEATLEY,
H. WINSHIP WHEATLEY, JR.,
1010 Vermont Ave., N.W.,
Washington, D. C.,
Attorneys for Plaintiffs-Appellants.

* * * * *

82

Memorandum

March 8, 1948: Appeal Bond filed: \$250.00

* * * * *

83

Filed Mar 8 1948

Statement of Points on Which Appellants Intend to Rely on the Appeal

A concise statement of the points on which the appellants intend to rely on the appeal is as follows:

1. The Court erred in entering the judgment of February 9, 1948.

2. The Court erred in holding that there was no genuine issue as to any material fact and that the defendant, Eva W. Gaines, as the moving party, was entitled to a judgment as a matter of law.

3. The Court erred in holding that under F. R. C. P. Rule 56 there was no genuine issue of fact raised by the pleadings and affidavits on file.

4. The Court erred in holding that a decision of the Virginia Courts relating to real estate was res adjudicata as to the claim of the plaintiffs relating to personal property situate on the real property.

5. The Court erred in holding that a decision of the Virginia Courts relating to the ownership of the real estate was res adjudicata as to the claim of the plaintiffs relating to growing crops and emblements situate on the real property.

6. The Court erred in holding that the claim of the plaintiffs for damages resulting from the loss of personal property, growing crops and emblements, by reason of the acts of the defendant, were barred by a decision of a Virginia Court relating to the ownership of the parties of certain real estate.

7. The Court erred in holding that the plaintiffs could not recover damages for loss sustained by them as to certain personal property and rights in growing crops by
84 reason of the alleged actions of the defendant in respect to matters not included within the decree of a Virginia Court relating to the interests of the parties in certain real estate.

8. The Court erred in holding that the decrees of a Virginia Court relative to the interests of the parties in certain real estate and affidavits as to facts existing on July 1, 1946 were such as to bar recovery by the plaintiffs for improper acts of the defendant on May 23, 1946, causing the

plaintiffs to sustain a loss as to certain personal property, machinery and growing crops.

FRED H. CHRISTIANSON,
MARIE N. CHRISTIANSON,
Plaintiffs-Appellants.

H. WINSHIP WHEATLEY,
H. WINSHIP WHEATLEY, JR.,
Attorneys for Plaintiffs-Appellants.

* * * * *

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Filed Mar 8 1948

Designation of Record

The plaintiffs, Fred H. Christianson and Marie N. Christianson, the appellants herein, hereby designate, for inclusion in the record on appeal, the following:

1. The complaint for damages and annexed bill of particulars, filed December 7, 1946.
2. The answer of the defendant, Eva W. Gaines, filed May 23, 1947, and Exhibits A, B, C, D and E, annexed.
3. The amended answer of the defendant, Eva W. Gaines, filed July 2, 1947, and Exhibits A, B, C, D and E, annexed.
4. The motion of Eva W. Gaines for summary judgment, filed July 19, 1947, and the memorandum of points and authorities in support thereof; the affidavit of Eva W. Gaines in support thereof, filed July 19, 1947.
5. The points and authorities in opposition to the motion for judgment on the pleadings, filed on August 27, 1947.
6. Order overruling motion for summary judgment and permitting filing of amended complaint, filed October 20, 1947.
7. The amended complaint for damages and bill of particulars, filed October 20, 1947.
8. The answer of Eva W. Gaines to amended complaint, filed November 7, 1947.
9. Stipulation as to exhibits, filed January 5, 1948.

10. The motion of Eva W. Gaines for summary judgment, filed January 5, 1948, and the affidavit of Eva W. Gaines, the affidavit of E. O. Farmer, and the affidavit of C. F. Reed, and the memorandum of points and authorities in support of the motion for summary judgment, filed January 5, 1948.

11. The proceedings at the hearing on the motion
86 for summary judgment before Mr. Justice Letts on February 5, 1948, which were reported stenographically, two copies of the reporter's transcript of which proceedings are filed herewith.

12. The order for summary judgment filed February 9, 1948.

13. The notice of appeal filed this date; and memorandum of appeal bond filed.

14. The statement of points on which the appellants intend to rely on the appeal, filed this date.

15. This designation.

FRED H. CHRISTIANSON,
Plaintiff-Appellant,

MARIE N. CHRISTIANSON,
Plaintiff-Appellant.

H. WINSHIP WHEATLEY,
H. WINSHIP WHEATLEY, JR.,
1010 Vermont Ave., N.W.,
Washington, D. C.,

Attorneys for Plaintiffs-Appellants.

* * * * *

89 **Proceedings on Motion for Summary Judgment**

Washington, D. C.
Wednesday, October 1, 1947.

The above-entitled matter came on for hearing before Associate Justice Alexander Holtzoff at 1045 o'clock a. m.

Appearances:

On behalf of the Plaintiffs:

Ben Lindas.

On behalf of Defendant, Eva W. Gaines:

Henry H. Glassie.

90 **PROCEEDINGS.**

The Deputy Clerk. Fred H. Christianson et al., versus Boyd M. Brosius and Eva W. Gaines.

The Court. You may proceed, Mr. Glassie.

MOTION FOR SUMMARY JUDGMENT DISMISSING COMPLAINT.

Mr. Glassie. If your Honor please, this is a motion to dismiss a complaint. It is on the basis of an answer to which are attached four certified copies of decrees of a Circuit Court of Loudoun County, Virginia, in which it has referred to a decision of the Court of Appeals of Virginia, which has been duly reported, and a certain lease which the plaintiff admits—

The Court. You mean this is a motion for a summary judgment, not a motion to dismiss?

Mr. Glassie. Yes, for summary judgment dismissing the complaint.

The Court. Proceed.

Mr. Glassie. The uncontroverted facts are as follows: A certain contract of sale was entered into between the parties of this litigation dated April 1, 1943. The plaintiffs herein refused to convey a certain farm in Loudoun County.

The Court. What is this action for? What is the action about?

91 Mr. Glassie. The action is to recover damages for taking possession of a farm in an improper manner and failing to permit the plaintiffs therein to remove their personal property.

The Court: A sort of action of praecipe (trespass)?

Mr. Glassie. Yes.

The Court. May I have counsel's name, please.

Mr. Glassie. My name is Henry H. Glassie, your Honor.

The defendants herein brought suit for specific performance, filed on August 7, 1944, and a lis pendens was filed against the farm in question on that date.

On October 27, 1944, the Circuit Court of Loudoun County entered a decree directing the plaintiffs herein to convey the farm to the defendants.

In the meantime, on October 1, 1944, the plaintiffs herein leased the farm to one E. O. Farmer, giving him possession of it.

The plaintiffs herein appealed to the Court of Appeals of Virginia, and the decree of the lower court, ordering specific performance, was affirmed in all its parts. An affirmance by the Court of Appeals of Virginia came down March 4, 1946. That is an important date, because the plaintiffs in their complaint allege July of 1946, when actually it was March 4, 1946.

Following this affirmance by the Court of Appeals, 92 the Circuit Court of Loudoun County made E. O.

Farmer, the tenant in possession of the farm, a party to the suit, and he ordered the sheriff to put the defendants herein in possession of the farm as far as the rights of the plaintiffs were concerned. That order was dated May 29, 1946, 54 days after the affirmance of the appeal by the Court of Appeals.

On June 10, 1946, the Circuit Court of Loudoun County ordered the tenant to surrender possession of the farm on July 1, 1946. In other words, that there was a total of three months and twenty-seven days after the Court of Appeals affirmed the specific performance decree, before

the lower court ordered the tenant in possession on behalf of these complainants to surrender possession.

Now, this decree of June 10, 1946, did more than merely order the plaintiffs herein and that tenant to surrender possession. It expressed several things, such as the rights to the growing crops, and it expressly provided the time when the personal property should be removed. It provided that the cattle on the farm should be permitted to graze in one particular field up until the date of July 1, 1946.

The Court. The complaint alleges that the defendants refused to permit any of the cattle to graze on the property. Does not that create an issue of fact? Is that allegation denied?

Mr. Glassie. The complaint alleges that the defendants went into possession in July, 1946. Now I am showing the Court that the decree of the local Court provided the cattle could be grazed until July, the time when the plaintiffs admit they went into possession, but not thereafter.

The Court: Not thereafter?

Mr. Glassie. That is right.

The Court. I see.

Mr. Glassie. The Court of Appeals affirmed the decision in July of 1946.

The Court. In other words, you say all of these things were done by the plaintiffs after the decision of the Supreme Court of Virginia, and pursuant to the terms of the decree of the Court of Virginia; is that correct?

Mr. Glassie. And pursuant to the express decrees of the Circuit Court which was in accordance—

The Court. Is that your contention?

Mr. Glassie. Yes, sir.

The Court. I will hear the other side, then.

Mr. Lindas. Well, of course, your Honor, our contention is that before the time set by the decree expired, they had taken possession of his personal property, and they had

refused to permit the herd of cattle to pasture in the place that they should have pastured; that he was compelled to sacrifice the cattle and sold it for practically nothing; that they took the personal property and improvements that belonged to him and refused to let him have them, which ran into a considerable sum of money.

The Court. Have you filed an answer to the affidavits, Mr. Lindas?

You see, this is a motion for summary judgment. I observed you filed points and authorities in support of your position, but have you filed any affidavit denying the allegations of the complainant's affidavit?

Mr. Lindas. No, I have not. Might I ask leave to do that, your Honor?

The Court. Yes, I will grant you leave to do that.

How much time do you want?

Mr. Lindas. One week, your Honor.

The Court. Is there any objection to that?

Mr. Glassie. No, your Honor, but I would like to point out again that the complaint alleges July and the decrees themselves show they had a right to take possession in July.

The Court. July, of course, has 31 days in it. There is no allegation in the complaint as to whether this was the 1st or 2nd of July, or the end of July.

Mr. Glassie. No, but the complaint admits the defendants did not go in, and they had a right to go in on July 1st.

The Court. What was the date of the decree?

Mr. Glassie. March 4, 1946.

Mr. Lindas. Well, I alleged it was July.

95 The Court. Oh, no; the allegation in the complaint is that it was in the month of July.

Mr. Lindas. So, if that is an error—

The Court. Now, Mr. Lindas, in paragraph 9 of your complaint you say the defendants entered after the rendering of the decision.

Mr. Lindas. Yes, after the decision, but before the time fixed for the removal of the property.

In other words, the decision was rendered which gave them permission to get the real estate, but then before the time expired in which they could remove the property, they immediately took possession.

The Court. What do you say as to that, Mr. Glassie?

Mr. Glassie. Well, I say that is different from anything the complaint has alleged previous to this.

The Court. No, I don't think there is anything inconsistent in the complaint. Anything that is inconsistent is Mr. Lindas' statement. He seems to mean that you have a material issue of fact here, and if there is a material issue of fact, a motion for summary judgment may not be rendered.

Mr. Glassie. The only issue of fact is whether this Court of Appeals' decision came down in July of '46 or in March, and that is a matter of public record.

The Court. That is a public record, but not the issue to which I have reference.

96 Mr. Glassie. Mr. Lindas admits that the defendants herein actually took possession on July 1, 1946.

The Court. My understanding of Mr. Lindas' position is that the defendant took possession before the date fixed by the decree.

Mr. Lindas. That is right, your Honor.

The Court. You say that possession was taken after the date fixed by the decree. So there you have a material issue of fact. How can I properly grant a motion for summary judgment?

Mr. Glassie. Can I limit his denial, then, to the fact that he took possession—he must allege that they took possession before July, 1946, your Honor.

The Court. I do not know whether it was before July 1 or not. I don't know about when the defendant took possession.

Mr. Glassie. The defendants here took possession in July, and the decrees show exclusively they had the right as of July 1, 1946. He will have to amend his complaint.

The Court. I think I would like to see the decrees.

Mr. Glassie. They are attached to the answer.

The Court. Yes, I see that.

Is that a decree of June 10th? Is that the one you refer to?

Mr. Glassie. Yes, your Honor.

The Court. Yes, that decree provides that the defendant surrender possession on July 1st.

And you allege in the complaint—

Mr. Glassie. That they took possession after July.

The Court. No, it does not say that. It says after the rendering of the decision.

Mr. Glassie. But he says the decision was rendered in July.

Mr. Lindas. Well I will ask leave of the Court to file an amended complaint within a week.

The Court. I am going to grant the plaintiffs leave to amend his complaint. I think he should have that opportunity. Then I will deny this motion without prejudice.

Mr. Glassie. All right. Without prejudice, your Honor will allow making another motion?

The Court. Yes.

* * * * *

**BRIEF AND APPENDIX FOR EVA
W. GAINES, APPELLEE**

IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9841

FRED H. CHRISTIANSON and MARIE N. CHRISTIANSON,
Appellants,

v.

EVA W. GAINES, *Appellee.*

**Appeal from Summary Judgment Entered by the United
States District Court for the District of Columbia.**

United States Court of Appeals

*for the District of Columbia
Circuit*

FILED SEP 30 1932

Joseph W. Stewart

CLERK

BARBOUR, GARNETT, PICKETT,
KEITH & GLASSIE,
of Counsel.

HENRY H. GLASSIE,
THOMAS M. COOLEY, II,
Tower Building,
Attorneys for Appellee.

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3 Moore, Fed. Practice 56.04	4
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IN THE
United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

No. 9841.

FRED H. CHRISTIANSON and MARIE N. CHRISTIANSON,
Appellants,

v.

EVA W. GAINES, *Appellee.*

Appeal from Summary Judgment Entered by the United
States District Court for the District of Columbia.

BRIEF FOR APPELLEE.

JURISDICTIONAL STATEMENT.

This case is before this court on appeal from a summary judgment entered in favor of Appellee upon an amended complaint and answer and certain affidavits filed by Appellee.

This court has jurisdiction to review the decision below pursuant to Section 101 of Title 11 of the District of Columbia Code of 1940 (18:1).

STATEMENT OF THE CASE.

On April 1, 1943 Appellants and Appellee entered into a contract for the sale of certain real estate to Appellee. Appellants refused to convey said real estate. Appellee filed suit in the Circuit Court of Loudoun County, Virginia on August 7, 1944 for specific performance and filed a *lis pendens* (Jt. App. 14). On October 27, 1944, said Court entered a decree directing Appellants to convey said property to Appellee (Jt. App. 2-4). Appellants appealed and the Supreme Court of Appeals of Virginia entered judgment affirming the decree March 4, 1946 (Jt. App. 14). On May 29, 1946 the Circuit Court for Loudoun County, Virginia entered a decree making Appellants' tenant party to the suit and directing the Sheriff to place Appellee in possession of the property as far as the rights of the Appellants were concerned (Jt. App. 4, 5). On June 10, 1946 said Circuit Court entered a decree ordering Appellants' tenant to surrender full and complete possession of said real estate on or before July 1, 1946, and settling the rights of the parties in growing crops and personalty on said real estate (Jt. App. 6, 7). On July 1, 1946 Appellee was placed in possession of said real estate by the Sheriff of Loudoun County, Virginia in accordance with said decree (Jt. App. 21).

Appellants brought this action against Appellee to recover alleged damages of over \$3,000.00 asserted to have been incurred by Appellants as a result of their being compelled to vacate Appellee's farm.

Appellee moved for summary judgment, which motion was granted, and an order was issued by Judge Letts dismissing the case as to Appellee.

RULE INVOLVED.

Rule 56(c) of the Rules of Civil Procedure for the District Courts of the United States.

STATEMENT OF POINTS.

A. Appellee was entitled to summary judgment, since no genuine issue of material fact was presented, and Appellant was not entitled to recover as a matter of law.

B. The Virginia decrees were binding upon Appellant.

SUMMARY OF ARGUMENT.

The amended petition, answer thereto, and affidavits filed by Appellee, taken together, disclose no genuine issue of material fact.

The disputed allegations of Appellants' complaint—that Appellee by a threatening letter prevented Appellants from securing a fair price for certain movables because, fifty (50) days after the final decision determining Appellee's right to a certain farm on which the movables were situated, Appellant, in response to the notice to quit, made a disadvantageously hasty sale of the articles in question—do not comprise a material issue of fact, since, if proved, they would not as a matter of law provide Appellants with a cause of action.

The said allegations do not constitute a genuine issue of material fact, since Appellants made no effort to set forth definite and factual matters establishing a cause of action in Appellants. Indeed Appellants offered no affidavits at all, even after expressly requesting the Court for additional time to do so. Therefore, Appellee is entitled to judgment as a matter of law.

(B) Appellants were at all times parties to and bound by the various Virginia decrees arising out of the litigation by which Appellee's right to the farm was determined.

ARGUMENT.

A. Appellee Was Entitled to Summary Judgment Since No Genuine Issue of Material Fact Existed.

The sole issue in this appeal is whether, in the state of the record as it appeared before the Trial Judge, summary judgment could properly be entered. It could, under Rule 56(c) of the Federal Rules of Civil Procedure, if the record then disclosed:

“no genuine issue as to any *material* fact and that the moving party (was) entitled to a judgment as a matter of law.” (Emphasis supplied).

Obviously, disputed allegations which, if proved, would not alter the decision are not material and do not require trial, as has been held in numerous cases.

See e.g.: Finlay v. Union Pacific R. Co., 6 F. R. D. 284 (D. Kans. 1946). *Miller v. Hoffman*, 1 F. R. D. 290 (D. N. J. 1940); *Gifford v. Traveller's Protective Ass'n.*, 153 F. (2) 209 (C. C. A. 9, 1946); 3 Moore, Federal Practice, 56.04.

Appellants' allegations which are relied on as raising material issues are as follows:

“8. That immediately before the rendering of the decision as above set forth the defendant herein on May 23, 1946, notified said plaintiffs in writing to vacate at once, and refused to permit any of the cattle or dairy herd of the plaintiffs to graze on said property; that defendant refused to permit said plaintiffs or his tenants to remove any of the growing crops; refused to permit plaintiffs to remove any of the temporary improvements; demanded that everything be removed from said premises under threat to throw all of the personal property, farm equipment and other articles unto the public highway.

9. That as a result of these illegal acts on the part of the defendant plaintiff was compelled to sacrifice the dairy herd to prevent the herd from starving, at a figure far below their actual value, was compelled to

sell all the farm machinery at far below its actual value; lost all of the temporary improvements made on said property, lost all the growing crops that were on the said farm.

10. That at the time of the actions of the said defendant the said defendant well knew that plaintiffs had no means of caring for the said personal property and livestock; well knew that no legal or proper notice had been given plaintiffs; well knew that the action on their part would cause the loss to the plaintiffs of all their interest in the said personal property and that their acts and threats were made with the sole object of ruining the plaintiff herein. (Jt. App. 11.)

The record otherwise showed that Appellants were not and had not been in actual occupancy of the farm in question after October, 1944 (Jt. App. p. 18); That Appellee had not been in or near or taken possession of any part of the farm or any property thereon before July 1, 1946 (Jt. App. 17); That judgment finally upholding the decree of specific performance entitling Appellee to the farm was entered by the Supreme Court of Appeals of Virginia on March 4, 1946 (*Christianson v. Brosius*, 184 Va. 958); That throughout the period in question the actual use and custody of Appellants' stock, farm machinery, crops and improvements on the farm were in the tenant thereon and not in Appellants (Jt. App. 19, 20); That, within six (6) days of the alleged threatening letter here relied on, the Circuit Court for Loudoun County in the same proceeding in which specific performance had been ordered, decreed "That the Sheriff of Loudoun County be, and he is hereby directed to place (Appellee) in possession of said property as far as the rights of (Appellants) are concerned." (Jt. App. 5), obviously because Appellants had failed to voluntarily comply with the affirmed decree of the Court; and that, after further proceedings, the Circuit Court allowed Appellants' tenant until July 1 to vacate the farm (Jt. App. 6).

In these circumstances, Appellants' allegations, if proved, plainly do not state a cause of action. Appellants

were at all relevant times parties to an existing litigation in which any and all questions as to their rights to use the said farm could be, and were in fact, determined. No matter how threatening Appellee's letter may have been, Appellants had opportunity for full protection if the threats were unjustified, and were fully apprised of their rights. This was clearly understood by Judge Letts, the court below, who engaged in the following colloquy with Appellants' counsel:

Mr. Lindas: " * * * They forced him off prior to the decision of the court."

The Court: "How did they force him off? He understood his rights under the court's decree, didn't he?"

Mr. Lindas: "I beg pardon?"

The Court: "He understood his rights?"

Mr. Lindas: "But they paid no attention to it. They forced his cattle off the place".

The Court: "How?"

Mr. Lindas: "They refused to let him have the use of the pasture." * * *

The Court: "How could they refuse him?"

Mr. Lindas: "Of course, that would be a question of fact * * *."

The Court: "I don't understand how they could because the Court hadn't refused to let him have the use of it."

(Appellee's Appendix pp. 8-9).

Moreover, Appellee would have been fully justified in giving Appellants notice to vacate the farm since the judgment finally determining her right to the premises had been handed down fifty (50) days before the date of the alleged threatening letter.

Conduct far more extreme than anything alleged or possible to prove in conformance to the allegations here has been held as a matter of law to afford actual tenants no cause of action even when accompanied by present physical demonstrations on the part of the landlord. *Stearns v. Sampson*, 59 Me. 568, 8 Am. Rep. 442 (1871); *Smith v. Gowdy*, 196 Ky. 281, 244 S. W. 678 (1922); *Bechtel v.*

Combs, 70 Pa. Super 503 (1918); *People's Finance & Thrift Co. v. Harmel*, 183 Okla., 413; 82 P(2) 944 (1938).

A fortiori, the assertion, in absentia, of Appellee's right to immediate possession as against Appellants who were not in possession comprises no actionable wrong. If Appellants, after waiting fifty (50) days from the time when it was determined that Appellee was entitled to the farm, suffered loss because Appellee advised them that she wished to exercise her rights to the property and exclude them from it, their actions in then disposing of their property in an ill-advised and hasty manner could in no way impose liability upon Appellee.

The issue thus sought to be asserted by Appellants is not a genuine one within the requirements of Rule 56(c). See: 3 Moore, Federal Practice, 56.01. This is demonstrated by their conduct in the court below. No offer was ever made to render these allegations definite and factual by introducing affidavits appending the letter complained of or otherwise showing the facts relied on to prove the conclusion that Appellee, in some unstated manner, "refused to permit" Appellants to graze their cattle or remove crops or improvements. See: *Gordon Corp. v. Cosman*, 232 N. Y. App. Div. 280, 249 N. Y. Supp. 544 (1931). The absence of any such attempt on the part of Appellants is especially significant in the light of the fact that they once secured denial of the motion for summary judgment (without prejudice) by an express request to be permitted to file an affidavit:

The Court. Have you filed an answer to the affidavits, Mr. Lindas?

You see, this is a motion for summary judgment. I observed you filed points and authorities in support of your position, but have you filed any affidavit denying the allegations of the complainant's affidavit?

Mr. Lindas. No, I have not. Might I ask leave to do that, your Honor?

The Court. Yes, I will grant you leave to do that.

How much time do you want?

Mr. Lindas. One week, your Honor.

The Court. Is there any objection to that?

Mr. Glassie. No, your Honor, but I would like to point out again that the complaint alleges July and the decrees themselves show they had a right to take possession in July. (Jt. App. 31).

B. Decrees of Virginia Court.

With respect to Appellants' ingenious analysis of the Virginia Decrees and their argument as to the *res judicata* doctrine, it is necessary to say only that all the decrees referred to were rendered in the same litigation, to which Appellants were at all times parties and represented by counsel.

CONCLUSION.

Appellee respectfully submits that the judgment below must be affirmed on the grounds: That the allegations of fact upon which Appellants rely are not material; that the allegations do not constitute a genuine issue of fact; and that Appellee is, on the whole record, entitled to judgment as a matter of law.

It is therefore respectfully requested that the judgment of the court below be affirmed and the appeal be dismissed.

Respectfully submitted,

HENRY H. GLASSIE,
THOMAS M. COOLEY, II,
Tower Building,
Attorneys for Appellee.

BARBOUR, GARNETT, PICKETT,
KEITH & GLASSIE,
of Counsel.

APPENDIX

APPENDIX FOR APPELLEE

66

Filed Mar 8 1948

Washington, D. C.,
Thursday, February 5, 1948.

The above-entitled matter came on for hearing on Motion for Summary Judgment at 10:00 o'clock a.m., Thursday, February 5, 1948, in The District Court of the United States for the District of Columbia, in the Court House in the City of Washington, District of Columbia.

Before:

Honorable F. Dickinson Letts, Associate Justice of The District Court of the United States for the District of Columbia.

Appearances:

Ben Lindas, Esquire, on behalf of Plaintiffs;

Henry H. Glassie, Esquire, on behalf of Defendant Eva W. Gaines.

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PROCEEDINGS.

The Deputy Clerk of Court: Christianson v. Brosius.

The Court: Mr. Glassie, what is the motion?

Mr. Glassie: Motion for Summary Judgment.

This case has had a long court history. It arises out of a contract of sale of land in Loudoun County, Virginia, dated April 1, 1943, by which the plaintiffs herein agreed to sell the defendants herein a certain farm.

The plaintiffs refused to carry out the contract and suit for specific performance was filed by the defendants August 7, 1944. At the same time lis pendens was filed against the land.

Subsequent to the filing of the suit for specific performance the plaintiffs herein leased the property to a tenant, one E. O. Farmer, and gave him possession under a written lease which was expressly subject to the litigation.

The Circuit Court of Loudoun County, Virginia, entered a decree of specific performance on October 27, 1944, and the plaintiffs in this case took an appeal to the Supreme Court of Appeals of Virginia. The decree of the lower court was affirmed in all its parts on March 4, 1946, and reported in 184 Va. 958.

Following this affirmance by the Supreme Court, the Circuit Court of Loudoun County, ordered the Sheriff of Loudoun County, on May 29, 1946, that is, 54 days after the affirmance by the Supreme Court, the Circuit Court ordered the Sheriff to put the defendants here in
68 possession of the property. A certified copy of that decree is attached to the pleadings, duly certified.

It reads:

“And the Court doth further adjudge, order and decree that the Sheriff of Loudoun County, be, and he is hereby directed to place the complainants, or any one claiming under them, in possession of said property as far as the rights of Marie N. Christianson and Fred H. Christianson are concerned.”

At the same time the Circuit Court made the tenant, E. O. Farmer, a party to the proceedings, on the same day, May 29, 1946, and then by a later decree of June 10, 1946, the Circuit Court ordered the tenant, E. O. Farmer, to surrender possession on July 1, 1946. In other words, the tenant, the only one in actual possession, was ordered to surrender possession on July 1st, which was three months and some days, practically four months after the decree of affirmance of the Supreme Court of Appeals. This decree of June 10, 1946 went into a lot of detail about the stock, and the crop division, and the time in which the personal property could be removed, to-wit, July 1st, and went into detail and provided in which field the cattle could be kept. I would like to read to Your Honor a part of the decree of June 10th:

69 “The Court doth further adjudge, order and decree that E. O. Farmer be and he hereby is directed and required to surrender full and complete possession of the land in the bill and proceedings mentioned and described on or before the 1st day of July, 1946, to the said Eva W. Gaines; that the said E. O. Farmer is granted the right to harvest the barley crop on or before July 1st. 1946, retaining one-half thereon for his own use and the remaining one-half to be harvested by him and stored in the granary for the use of Eva W. Gaines and that the cost of threshing the same to be borne equally by said Eva W. Gaines and E. O. Farmer, the straw from said barley to be left on the farm, the said Farmer to perform all labor without charge in connection therewith; the said Eva W. Gaines to have the hay to be cut and to have the right to immediately work the corn crop now on said farm, and to have the right to plant the three acres now plowed in any crop she may desire. The said Eva W. Gaines to have the right to put the hay in the mow. The said E. O. Farmer to keep the cows in what is known as the front field opposite the Daniel property, and not to allow them to graze in any other field on the farm.”

In other words, the decree was very specific in detail of how the possession should be surrendered, and in
70 any event gave complete possession to the aggrieved party here on July 1, 1946.

Now, there are three affidavits—I see here that the complaint—

The Court: You can take this.

Mr. Glassie: The complaint alleges that immediately after this decree the defendants refused to let the cattle graze, refused to let the tenant remove crops, refused to allow anything to be removed under threat of throwing it in the street; that the defendants did this immediately after the decree of the Court of Appeals.

Now, there are three affidavits attached to the motion, if Your Honor please, and they are short and I think it

is proper to read each one of them. I might say that there are no affidavits submitted by the plaintiff. The affidavit of

"Eva W. Gaines, being fully sworn deposes and says that she was put in possession of the farm mentioned in the complaint herein, by the Sheriff of Loudoun County, Virginia, and entered into possession of said farm July 1, 1946. Before July 1, 1946 she had not been in or near or taken possession of any part of said farm, or any property thereon;

That her right to take possession of said farm on July 1, 1946 and indeed, as far as plaintiffs herein are concerned, the right to take possession on April 29, 1946, was
71 in accordance with decrees and a final judgment of the Circuit Court of Loudoun County, Virginia," and goes on to mention these decrees;

"That at the time of taking possession of said farm on July 1, 1946 there was no personal property of any kind thereon."

There is an affidavit of

"C. F. Reed, being duly sworn deposes and says as follows:

"That I have been Deputy Sheriff in Loudoun County, Virginia, since January 1st, 1940, and that I am a deputy Sheriff under S. P. Alexander, Sheriff of Loudoun County, Va.

"I further state that on July 1st, 1946, pursuant to an order of the Circuit Court for Loudoun County, Va., directing me to place Eva W. Gaines in possession of a certain farm formerly belonging to Fred H. and Marie N. Christianson and near Leesburg, on Route 15 in Loudoun County, Va., which order was entered on June 10th, 1946, in the chancery cause entitled Brosius et al v. Christianson, I did go to said farm with Eva W. Gaines and put her in possession thereof in accordance with said order. I further state that up until July 1st, 1946, E. O. Farmer,

the tenant, was in possession and that on July 1st, 1946, there were no dairy cows or other live stock on said farm and no farming machinery. The only thing there or I should say personal property was a little hay which a man by the name of Downs claimed to have bought from Mr. Farmer and Miss Gaines said that he might remove this as she had no objection and that he could get it any time.

"Mr. Farmer was perfectly willing for Miss Gaines to have possession. The fact is that the Christiansons had not been on the farm for several years, and it had been occupied solely by Mr. Farmer and his family."

I further have an affidavit from Mr. Farmer, the tenant:

"E. O. Farmer, being duly sworn deposes and says:

"That under date of September 23, 1944 the farm formerly owned by Fred H. Christianson and Marie N. Christianson in Loudoun County, Virginia was rented by them to him under the terms of a written rental agreement, copy of which is appended;

"That he entered into possession of the said farm under this rental agreement on October 1, 1944 and remained in possession until June 30, 1946;

"That at the time of making said agreement and taking possession he knew that the title to the farm was under litigation and his rental agreement was expressly subject to such litigation;

73 "That from October 1, 1944 until June 30, 1946 he had sole and exclusive possession of the farm and Fred H. Christianson and Marie N. Christianson did not have such possession;

"That all livestock and personal property belonging to Fred H. Christianson and Marie N. Christianson was removed from said farm some time in May or June, 1946, and before June 30, 1946, so that there was no personal

property on said farm belonging to said Fred H. Christianson or Marie N. Christianson or himself when he gave up possession thereof on June 30, 1946.

“That he did not remove from said farm or remove his personal belongings from said property under any threat or compulsion from Eva W. Gaines, but did so in accordance with the terms of an order of the Circuit Court of Loudoun County, Virginia as to possession, the ownership of crops and the removal of livestock and other personalty.”

That is the affidavit of the tenant farmer, and I submit it is simply a question of the Court recognizing the jurisdiction of the Virginia courts and the decrees, the decrees represented by copies; the defendant herein took possession exactly as she was entitled to take possession, and was put into possession by the Sheriff on the day designated by the orders. The property was all removed, as shown by the affidavit of the Sheriff and the tenant
 74 in possession, before that date. There was no violation of any rights of the plaintiffs here in that property and as far as being done, which seems to be the chief complaint, too quickly it was not done until four months after the Courts of Virginia had affirmed the decree for specific performance.

The Court: We will take a five minute recess.

(Thereupon, a short recess was had.)

Mr. Glassie: If Your Honor please, I would like to make one remark I forgot.

The Court: Yes.

Mr. Glassie: I believe I mentioned that there were no counter affidavits filed, and I received no opposing points and authorities. This motion came up once before before Mr. Justice Holtzoff. At that time there were no opposing affidavits. Justice Holtzoff suggested that the plaintiffs have additional time to get in affidavits if they were able

to oppose, and Mr. Justice Holtzoff also permitted the plaintiffs to amend the complaint at the same time.

I just wanted to call Your Honor's attention to the fact that not only the plaintiff has no affidavits in, but has certainly been put on notice in this case that if he wants to have them in they should be in here now, and I think the answer to that is that there is no statement of fact that could be put in.

75 The Court: Did you amend?

Mr. Lindas: Yes, I filed an amended complaint, and it wasn't feasible for them to put in an affidavit, but to put in an amended complaint, which we filed; and his motion for summary judgment was overruled, as the order will show, and the reason we didn't file any affidavits in this case is because we think the counter issue can be tried not on affidavits, and we do not admit that there was any use over in Virginia, and we don't—

The Court: I don't find—yes, I do.

Mr. Lindas: We do not think that there was a court proceeding over in Virginia; but what our complaint is, Your Honor, is this, and when all the facts are presented, when the case is tried, it will be shown, pursuant to this amended complaint that one week before the decision of the Court he received written notice to vacate, to get all his things off of there, but when the decision came down he was not only told to get off, but was denied the use of the pasture for a large herd of dairy cattle, which were left to starve, and he was compelled to get rid of the herd of cattle, practically his whole life savings.

They filed an affidavit denying that which I think brings up a question of fact.

The Court: In the affidavit?

Mr. Lindas: The affidavit didn't specify. The affidavit states that on July 1st they put this woman in possession, but the affidavits, including the affidavit of the tenant, do not deny the fact, they concede that on July
76 1st the things of Mr. Christianson were gone. They

were gone, that is true, forced to take the cattle away so they wouldn't starve to death.

The Court: Tell me what the suit is.

Mr. Lindas: The suit is this: We claim the decision of the court of Virginia gave him a right to July 1st to remove his property from this place but even before the decision was rendered the defendant, Eva Gaines, by threats forced this man to get rid of everything he had on there, not only by threats but by actively refusing to permit the dairy cattle to use the pasture, and he was compelled, before July 1st he was compelled to get his things off, and after July 1st he was refused permission to remove and he lost everything he had in it, and we claim, Your Honor, this woman compelled him to remove everything, and he lost his cattle and everything.

The Court: That was by virtue of the decree of court?

Mr. Lindas: The decree of court wasn't to take effect until July 1st, and they started forcing him off the 23rd of May and the decision wasn't rendered until the 29th of May; that on the 23rd of May they served written notice on him to get all his things off the place, and we allege after that they refused to let him put the cattle in that pasture although he wasn't supposed to get off until July 1st, but they forced him off prior to the decision of the court.

77 The Court: How did they force him off? He understood his rights under the court's decree, didn't he?

Mr. Lindas: I beg pardon?

The Court: He understood his rights?

Mr. Lindas: But they paid no attention to it. They forced his cattle off the place.

The Court: How?

Mr. Lindas: They refused to let him have the use of the pasture.

The Court: Under the decree he had the right to use the pasture.

Mr. Lindas: He had a right but they wouldn't let him use it.

The Court: How could they refuse him?

Mr. Lindas: Of course, that would be a question of fact. We didn't plead all of the things in the complaint, and I think we should have an opportunity to produce our evidence. We allege all those things distinctly have occurred, and now they come in by filing a few affidavits and say "That is our evidence in the case and we want a judgment." Now, if we are correct, if they did order him off before the decree was rendered, and refused to him use the pasture—

The Court: I don't understand how they could because the Court hadn't refused to let him have the use of it.

Mr. Lindas: In the first place, he had rented it.
78 The personal property belonged to him, he was renting, he was a tenant—I haven't pleaded it, I would have to develop that in my evidence, but they gave nothing to the tenant. They kept the cows from going into the pasture; the cows were actually starving when he sold them for lack of feed; the hay and feed he was to have for the cattle were taken away, and he couldn't harvest the crops; nothing was given to him—all of those things we have alleged, whether we can prove his case, but we think we can—they personally, the defendants, told him they put the things out on the highway if they didn't get rid of them, and he had until the 1st of July, and they say on the first of July none of his things were there—of course they weren't, they were forced off of there.

Mr. Glassie: If Your Honor please, I would like to call your attention again to a couple of facts I think significant: Mr. Lindas said they threatened the plaintiffs here that they must remove their property on May the 23rd. Actually, the Court of Appeals affirmed the decree of specific performance on March 4, 1946, and as far as the plaintiffs here are concerned the defendants didn't have to wait until July 1st. There was a decree of May 29th so they were entitled to immediate possession as far as the plaintiffs here are concerned. The court just allowed them until

July 1st as a favor, and I think the affidavits of the three people completely negative any claim that this was done under any threat of compulsion, or in any other way, 79 except in accordance with the decree.

The Court: I think the motion must be sustained. I think the rights of the people are fixed in the court's decree, and they are all bound by its terms.

Mr. Glassie will present the order.

(Hearing concluded.)

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